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Campbell, John Campbell,
Baron

Speech...Right Hon. Lord
Chief Justice Campbell

[Westminster]

[1852?]

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SPEECH

OF THE

RIGHT HON. LORD CHIEF JUSTICE CAMPBELL,

IN THE HOUSE OF LORDS, FEB. 25, 1851,*

AGAINST THE SECOND READING OF THE BILL FOR LEGALISING
MARRIAGE WITH A DECEASED WIFE'S SISTER.

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LORD CAMPBELL said—that, having the honour to hold so high an office in the magistracy, he thought it his duty to express his opinion upon this Bill, which sought so importantly, and, he thought, so fatally, to change the law of England. The arguments on both sides—so much had been said and written upon the subject—were familiar to their Lordships; and those against the Bill had been reiterated by the Right Reverend Prelates who had preceded him in a manner which must make a deep impression upon their Lordships, and upon the mind of the nation. He had listened with delight to the opinions which he had heard that night, and he trusted that the agitation which the noble Viscount who last addressed the House complained of was drawing to a close. He was desirous of expressing his approbation of the manner in which the measure had been introduced by the noble Earl, who had shown great research, great learning, and great acuteness. No doubt he was actuated by the purest and most honour-

* Hansard, vol. cxiv. page 970.

able motives, as were others entertaining the same sentiments in either House of Parliament. So were many of the Petitioners in favour of this measure; but he would not be doing his duty unless he reminded their Lordships of the manner in which this agitation was begun and carried on. They had had agitations upon the Reform Bill, upon the repeal of the Corn Laws, and upon other great political measures; but he believed this was the first time that societies had been instituted for the purpose of changing a law resembling that of marriage, and where, purely for the purpose of personal interest, a great effort had been made to influence public opinion. He could not help saying, from the evidence that had been laid before him, that this agitation was begun by those who had violated the law, and that it had been carried on by them in conjunction with those who had entered into engagements which the law forbade. Let us see the manner in which it was conducted. They began by retaining counsel—by retaining solicitors—by sending lecturers over the country—by writing pamphlets—and by holding public meetings, at which their advocates spoke from the platform. And what was the topic with which they begun? That, as the law then stood, these marriages, of a man with the sister of his deceased wife, were perfectly legal; and it was by having taught to the people of this country that these marriages were lawful, that they had occasioned in many instances the law to be broken, and then they brought forward those breaches of the law as arguments in favour of now altering the law of marriage. Although, as had been said, from the time when, in the second century, Christianity was first planted in this country, to the present, such marriages had been prohibited, yet it was asserted positively that they were perfectly lawful. Now this subject had been solemnly argued in the Court of Queen's Bench, before his distinguished predecessor, Lord

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Denman. The question arose—whether such a marriage was lawful or was void; and, by the unanimous judgment of the whole Court of Queen's Bench, they were declared to be void and incestuous. Some allusion had been made to an opinion which was expressed by a learned Judge, when he was at the bar, for whom he (Lord Campbell) entertained a profound respect as well as affection. Now his opinion, as a Judge, was not, in the slightest degree, to be impaired, because, in the haste of his profession, without having the case argued before him, or probably without having had time to consider the question, he at the bar gave a contrary opinion. On the contrary, the fact only added to the weight which attached to his opinion as a Judge, which he gave, after having heard the question solemnly argued before him by counsel on both sides. It was then proposed to appeal to that House; but so convincing were the reasons given by the Judges, that such a step was never ventured upon; and it had been from that moment allowed that the law forbade such marriages, and that therefore they could not be lawfully solemnized. Now, what was the next proceeding? They said, then, that the law prohibiting these marriages had been introduced by Lord Lyndhurst's Act—that Lord Lyndhurst's Act, which introduced the illegality of these marriages, ought to be repealed; and there had been repeated petitions presented to their Lordships, asking them to repeal Lord Lyndhurst's Act, which rendered these marriages unlawful. The agitators went about the country, asserting, in the most positive terms, that until Lord Lyndhurst's Bill passed, these marriages were sanctioned by the law of England. Now, the fact was, that Lord Lyndhurst's Act had made no alteration in the law; it had only altered the mode of procedure by which these unlawful marriages were to be set aside. There had been previously a great defect in the law of England on this point. Marriages, however

centurable on the ground of incest, were not void. Even if a man married his own sister, or his mother, he (Lord Campbell) was ashamed to say that that was not a void marriage; it stood good until it had been set aside by the decrees of a competent Judge. Lord Lyndhurst's Act properly provided that those marriages which heretofore had only been voidable, should be void, as they had been before the Reformation, and as they were in Scotland at this time. Lord Lyndhurst introduced no new law, but only improved the mode of procedure, the manner in which the law was to be, in future, enforced. He (Lord Campbell) thought their ancestors had acted with great wisdom when they separated from the Church of Rome. As had been stated by the Right Rev. Prelate who sat near him, there was nothing in which the Church of Rome more annoyed the people of this country than in its usurpation of the power of disturbing the laws of marriage. With respect to the unlawfulness of marriage, they multiplied the prohibited degrees to such an extent, that, among the upper ranks of society, few matches could be made without a dispensation from Rome; and they thus added to the power and the wealth of their Church. At the Reformation, however, the people of this country drew a distinct line of demarcation, indicating clearly the prohibited degrees, and all marriages within that line were regarded as unlawful, and all beyond it as lawful. Notwithstanding some quotations cited from law books by the noble Earl (Earl St. Germans), the rule then settled had been considered the law of England from the time of Henry VIII. to the present day. There was an attempt made in the reign of Charles II. to introduce a new law to allow the marriage of a man with his wife's sister, but it failed; and Lord Chief Justice Vaughan, and all the Judges at that time, concurred in the opinion that, according to the just construction of the 32nd of Henry VIII., such a marriage

was forbidden. The law continued so until Lord Lyndhurst's Act; and he trusted their Lordships would not alter it. If their Lordships said so by a large majority, the agitation would soon die away. Upon the Scriptural question it would not become him to give any decided opinion, although he must say, that, according to the rules of construction applied to human laws, he was inclined to agree with the Most Rev. Prelate who had spoken, and that of the Right Rev. Prelate who followed. But, if Scripture were silent on the subject, he had no difficulty whatever in saying that the marriage of a man with the sister of his deceased wife ought to be forbidden by the law of the land. The noble Viscount who last addressed their Lordships seemed to him (Lord Campbell) to treat the subject as if it were merely one of a physical nature.

Lord Gage explained that he had said he saw reasons for prohibition between every near blood relation.

Lord Campbell continued: In common society, at all events, when one conversed with those who approved this measure, one could not fail to be struck by hearing the argument used, that there was nothing unnatural in it. But this was not a mere physical question: it was a moral question; it was a social question; they were to consider what was to promote the purity, ease, and comfort of domestic life. Did the noble Viscount say he would merely look to consanguinity?

Lord Gage. Very nearly.

Lord Campbell. Would the noble Viscount contend that a stepfather might marry his stepdaughter, or that a stepson might marry his stepmother? Would that lead to the comfort and to the purity of domestic life?

Lord Gage. No, certainly not.

Lord Campbell. Then the noble Viscount would regard affinity. Where was the line to be drawn, if not by

taking consanguinity and affinity on the same footing? The argument of the Right Reverend Prelate (the Bishop of Exeter) was unanswerable, that man and wife were one flesh, and that, by the declaration of the Redeemer, the relations of the one were to be considered as relations of the other. If they adopted that line, there would be no difficulty in enforcing it, and the noble Viscount had not suggested any other as possible. They would perceive at once, that if there was no distinction between the sister of the wife and any stranger, and adulterous intercourse took place between the husband and the sister during the life of the wife, it would be simply adultery. On what ground would they allow a remedy to the wife for the adultery of the husband, in such a case? A remedy was now to be obtained by the wife, for this reason, and for this reason alone, that adultery with a wife's sister was incestuous; that the purposes of marriage were defeated; and, on that ground, that the marriage ought to be annulled. Upon a case of this description, Lord Thurlow had said—

"The wife cannot forgive the adultery and return to her husband, without being herself guilty of incest. Had this criminal intercourse taken place before marriage, the Ecclesiastical Court would have set aside the marriage, as incestuous and void. The wife could never live with her husband; and, if innocent, was she to be condemned for his crime to spend the rest of her days in the unheard-of situation of being neither virgin, wife, nor mother?"

He (Lord Campbell) thought it hardly necessary to touch on the argument which was used with respect to the benefit to be derived by the children of the deceased wife, from the fact of the sister becoming their stepmother. It had been already shown that, in a great majority of instances, the children must be sufferers, because in a great majority

of instances they would be deprived of the tender care of an aunt, which they now enjoyed. Legalise marriage between the widower and the deceased wife's sister, and the children must be deprived of the care and attention of that near relation, because, from this time forth, it would be utterly impossible for the sister of the deceased wife to remain under the same roof with the widower. With regard to the argument which had been used by the noble Viscount, that they would not introduce a law to forbid all marriages that were inexpedient, he (Lord Campbell) allowed that such a law would be absurd—it would be absurd to bring in a Bill to prevent marriage between a man of 75 and a girl of 16; but was it not quite clear that there was a great difference between marriages which were expedient and marriages which were incestuous? Could they have the benefit of purity of domestic life, unless that connexion was looked upon with abhorrence, as contrary to the law of God and the law of man? It was only by such a feeling being instilled into the mind, until it became a sort of instinct in all who came within its operation, that they could have the full benefit of that purity, peace, and happiness of domestic life which they now enjoyed. With regard to the violation of the law, he (Lord Campbell) believed there had been monstrous exaggerations as to the actual number of cases; but there was another source of that violation which also required notice. He observed that the returns were made from Lancashire and Staffordshire, where there were a considerable number of Roman Catholics. When the then Bishop of Melipotamus (now rejoicing in a more sounding title) was examined before the Committee as to what were the practices of the Church of Rome, he said they were certainly much less strict than in the Anglican Church; and he stated, in the most express manner, that, since the Act of 1835 had passed, making these marriages void—although, among Roman

Catholics, they could not be celebrated without dispensation—he had continued to grant dispensations for them; and, after a dispensation was granted, no Roman Catholic priest could refuse to celebrate the marriage. The law of the land was here distinctly set aside, and those marriages encouraged a direct violation of it. With regard to these marriages, which he (Lord Campbell) called incestuous, he had been assured in the most positive manner by those who had the best means of information, that they were not more numerous than instances of bigamy, an offence which he knew from experience, both as counsel and judge, was exceedingly common in every county in England. Not an assize was held scarcely without there being a trial for bigamy. It might, with as much reason, be contended that this was a ground for making polygamy legal,—that all that had been done to bind one man to one woman was ineffectual, contrary to the propensities of mankind, and, therefore, that polygamy should be legalised. If the ground of consanguinity was to be the only ground of prohibition, they might go on from permitting marriage between a man and his deceased wife's sister, to an extent fearful to contemplate. In some foreign lands such marriages were permitted; but he hoped that, though we might avail ourselves of the discoveries of science in other countries, we might, with regard to morality and domestic life, teach all the nations of the world. In no other country was the conjugal tie held with such sacredness as in England. In other countries they allowed marriages between an uncle and a niece; but he hoped that, in England they might still (though how long it would be so he knew not) look upon such marriages with abhorrence. In all those countries—Germany, for instance—marriage was set aside on the most frivolous pretences. In America, too, they allowed a dissolution of marriage in cases in which in this country we would not for a moment think of doing so.

We acted upon the sacred injunction, that it was for adultery alone marriages were to be dissolved; by a departure from the sacred precept the sanctity of the marriage tie had been impaired, and he hoped they would never seek in Berlin or New Orleans for examples to follow in domestic life. The preamble of the Bill most disingenuously recited, that it had been lately decided that these marriages were unlawful; but the fact was, that when it was so decided Lord Denman expressed his opinion, that, by the 32nd Henry VIII., such marriages were prohibited, and were unlawful. Scotland was excluded from the operation of this Act. And why? Because it was utterly impossible to include Scotland. The people of that country, with hardly a single exception, looked upon such unions, to use the language of the Right Rev. Prelate, with abhorrence; and they would have just ground to complain, because such marriages were declared by the Confession of Faith contrary to God's law; and the Confession of Faith had been made part of the law of Scotland by an Act of Parliament which was still in force. But was not the omission of Scotland fatal to the Bill? In Scotland these marriages would be void; in England they would be valid. They might just as well make one law for Middlesex, and another for Surrey; and the confession of the noble Earl, that he could not extend that measure to the whole island, was reason enough for its rejection. The Bill proposed to enact that henceforth a marriage between a man and the niece of his wife should be lawful. What were the arguments in favour of the niece being allowed to become the wife of her uncle by marriage? Was she to take care of the children? Would the dying wife recommend her husband to marry her niece? Did nieces, too, make the best stepmothers? These were the most plausible arguments that have been brought forward in favour of this Bill, but none of them applied to the niece. The

niece here became the wife of the uncle; but why not extend the same principle, and say that the wife might marry her brother-in-law? It was one of the melancholy facts that, if passed, this would not be a final Bill. Jealousy and alarm would be introduced into every family in England. The noble Viscount had truly stated that the female sex were already very much alarmed. If they took the whole of the female population, he believed ninety-nine out of every hundred would petition their Lordships that the Bill should never be allowed to pass; and he attributed this feeling not to any agitation which had been got up, but to the natural delicacy of the female sex, and their intuitive perception of what was just, right, and becoming. These marriages had been contracted in open violation of the law, and the parties were living in a state of concubinage, and he particularly objected to the clause legalising incestuous marriages which are now void; their children were illegitimate. Although the Legislature had interfered to sanction what had been done in ignorance, never till now had it been proposed to render valid marriages contracted in open violation of the law. He would only glance at what had taken place with regard to royal marriages. If ever there was a case which deserved commiseration, and in which they might be excused for feeling an inclination to render valid one of these marriages, it was that case which they had had to decide at the bar of their Lordships' House, where the parties were both of them innocent of contracting a marriage which was not recognized by law, where a lady of illustrious descent and immaculate virtue was led to the altar by a prince of the blood, and many opinions prevailed that it was a valid marriage by law. But, notwithstanding the powerful arguments urged, their Lordships unanimously came to the determination that the marriage was void. If, then, they refused to make valid a marriage con-

tracted by persons who believed they were acting in conformity with the law, how could they be asked to legalize the marriages of persons who had acted in direct opposition to the law? With regard to the parties who had contracted these marriages, he would state to their Lordships the words of his distinguished predecessor, Lord Denman:—

“I am aware that painful instances may be cited, where ignorant persons of the inferior classes of society have contracted marriages of this kind, and now find that they are invalid. But as to persons in a higher rank of life, if there are any who have contracted marriages since the passing of the late Act (that was, Lord Lyndhurst's Act), they have defied the law and broken its declared restraints.”

And he (Lord Campbell) must refer to an assertion made, not by the noble Earl who had brought the measure forward, but in various interested publications, that this is a measure of relief merely for the poor. That argument was perfectly fallacious. According to the statistics of the promoters of the Bill, these unlawful marriages were not contracted in the greatest number by the poor; they were contracted by persons chiefly in the middling and upper ranks, well educated, fully aware of what they were doing, and of the consequences of their own acts; therefore it was not for the sake of the poor, but for the sake of those who had consciously and deliberately violated the law, that the measure was to be passed. He (Lord Campbell) could now only express a hope that it would be rejected by a large majority. As to permitting the Bill to be read a second time, with the view to further discussion, the idea was preposterous. It rested on principle—it was not a matter of detail—and no noble Lord ought to vote for its being read a second time who was not prepared at once to

see it pass into a law. He trusted it would be rejected by such a majority as would take away all hope of future success, and that no further attempt would be made to disturb those principles which rest on divine precepts, and on which the purity and happiness of domestic life essentially depend.

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